

General Information Letter: The Employee Retirement Income Security Act does not prohibit state income taxation of Voluntary Employee Benefit Associations. Letter Ruling IT 93-0017 rescinded.

October 4, 2001

Dear:

In 1992 you wrote to the Illinois Department of Revenue in order to request information regarding the taxation of certain Voluntary Employees' Beneficiary Associations (VEBAs). Your letter to the Illinois Department of Revenue, dated November 9, 1992, stated the following:

I am interested in determining which tax exempt Voluntary Employees' Beneficiary Associations (VEBAs) exempt from federal income tax under Internal Revenue Code Section 501(c)(9) have paid unrelated business income tax to Illinois. This tax would have been reported through the filing of Form IL-990-T. Since these organizations are tax-exempt, it is my understanding that it may be a matter of public disclosure through an Illinois Freedom of Information Act or other similar authorization, for members of the public such as myself to either secure copies of those tax returns or to learn which of those organizations are paying unrelated business income tax. Please give me a call or let me know how I might follow up to gather such information.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill. Adm. Code §1200, or on the website <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Please be advised that this correspondence is a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

The Illinois Department of Revenue responded to your November 9, 1992 correspondence with its GIL No. IT 93-0017, dated January 21, 1993. Said GIL indicated that the information which you sought could not be disclosed for the reasons set forth therein. Said GIL indicated that the Department had determined that Illinois was preempted by §514 of ERISA from taxing "any employee benefit plan described in §1003(b)..."

Please be advised that GIL No. IT 93-0017, dated January 21, 1993 has been rescinded as it relates to the Department's determination that Illinois is preempted from taxing the unrelated business income of a VEBA.

It is now the Illinois Department of Revenue's determination that Section 205 of the IITA is not preempted by Section 514 of ERISA, and the unrelated taxable business income of a VEBA, as determined under Section 512 of the Internal Revenue Code, shall be such VEBA's base income in Illinois, without deduction for the tax imposed by the IITA. The Department's position as described in IT 90-0073, IT 93-0017 and IT-0187 has been rescinded, and the regulations pertaining to income not exempt from Illinois income taxation will be amended to reflect the Department's determination. (See 86 Ill. Adm. Code 100.2470(h)).

Taxpayers that relied upon the Department's letter rulings, IT 90-0073, IT 93-0017 and IT 93-0187, prior to the effective date of the amendment to 86 Ill. Adm. Code 100.2470(h), shall not incur liability

IT 01-0078-GIL  
October 4, 2001  
Page 2

for taxes or penalties pursuant to Section 4(c) of the Taxpayers' Bill of Rights Act, 20 ILCS 2520/1 *et seq.*

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, or require additional information regarding this issue, please do not hesitate to contact our office.

Sincerely,

Matthew S. Crain  
Staff Attorney -- Income Tax